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Synergy One Locating Services, LLC and Safe Markx, LLC, as Joint Employers; and Dervon Gaskins, and International Brotherhood of Electrical Workers, Local 387, AFL-CIO. Cases 28-CA-137972, 28-CA-143708, 28-CA-145625, and 28-CA-147819

April 11, 2017

SUPPLEMENTAL DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On July 1, 2015, the National Labor Relations Board issued an unpublished Decision and Order that approved the Formal Settlement Stipulation between the Charging Party, International Brotherhood of Electrical Workers, Local 387, AFL-CIO, and Respondent Synergy One Locating Services, LLC and Safe MarkX, LLC, as joint employers (Respondent Synergy), and that, among other things, ordered Respondent Synergy to make whole employees Mason Crisenbacker, Sean Cherry, Jacob Cherry, Troy Hager, Henry Maurice Petit,¹ Adam Valdez, Kevin Schroeder, Devin Koivisto, Timothy Montanez, Joshua Merino, Bryan McBride, Joe Moure, Edwin Cyrus Hare IV, Dan Huebner, David Venegas, Cory Jackson, James Redondo, Michael Cummings, Jason Lantrip, Manny Madrid, Pete Martinez, Stan Barker, Greg Digiordi, Garret Forrest, Sal Medina, and Jeff Rose for any loss of earnings resulting from the unlawful discrimination against them by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule as reflected in Appendix B to that decision, plus interest until paid in full.²

On August 3, 2015, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing in full the remedial requirements of the Board's Decision and Order.³

Although not a party to the original unfair labor practice proceeding, a controversy arose over the liability of Respondent Dervon Gaskins (Respondent Gaskins) to fulfill the remedial obligations of the Board's Order as

court enforced. Accordingly, on November 14, 2016, the Regional Director for Region 28 issued a compliance specification and notice of hearing alleging that Respondent Gaskins is personally liable, jointly and severally, with Respondent Synergy for remedying the unfair labor practices of Respondent Synergy and notifying the Respondents that an answer must be filed by December 5, 2016, in conformity with the Board's Rules and Regulations.

The compliance specification additionally sets forth the following allegations.

Relationship between the Respondents

1. At all material times, and continuing until an unspecified time in 2015, Respondent Synergy, a limited liability company with an office and place of business in Phoenix, Arizona, was engaged in providing utility locating services for utility companies.

2. At all material times, Respondent Gaskins has been the owner and a managing member of Respondent Synergy, and has been a supervisor of Respondent Synergy within the meaning of Section 2(11) of the National Labor Relations Act (Act), an agent of Respondent Synergy within the meaning of Section 2(13) of the Act, and an insider of Respondent Synergy within the meaning of 28 U.S.C. § 3301(5).

3. At all material times, Respondent Gaskins controlled the day-to-day management, labor relations policies, business operations, and financial resources of Respondent Synergy.

4. On at least the following dates, Respondent Gaskins used Respondent Synergy's funds for personal purchases without reimbursing Respondent Synergy:

(a) On or about August 7, and September 4, 2015, February 5, April 4, June 8, July 5, August 8, and September 5, 2016, Respondent Gaskins paid \$1950 each, for a total of \$15,600, in personal rent.

(b) On or about October 26, 2015, Respondent Gaskins purchased \$18,987 in Charlotte Hornets tickets in his own name.

(c) On or about April 21, 2016, Respondent Gaskins purchased \$9300 in Charlotte Hornets tickets in his own name.

(d) On or about September 28, 2016, Respondent Gaskins purchased \$25,000 in Charlotte Hornets tickets in his own name.

5. By the transactions described above in paragraph 4 and other transactions, Respondent Synergy transferred property to Respondent Gaskins without receiving a reasonably equivalent value in exchange for the transfer, at times when Respondent Synergy was insolvent or became insolvent as a result of the transfer.

¹ In accordance with the Board's Decision and Order, Petit is referred to as Henry Maurice Petit, although the compliance specification states his first name as Hendry.

² Greg Digiordi is listed as Greg Dejordy on Appendix B.

³ No. 15-72162.

6. By the transactions described above in paragraph 4 and other transactions, Respondent Synergy transferred property to Respondent Gaskins, at times when Respondent Synergy was insolvent and Respondent Gaskins had reasonable cause to believe that Respondent Synergy was insolvent.

7. At all material times, Respondent Gaskins failed to observe the corporate formalities of Respondent Synergy.

8. At all material times, Respondent Gaskins commingled his assets with those of Respondent Synergy and used corporate assets of Respondent Synergy for his personal use.

9. At all material times, Respondent Gaskins has diverted assets of Respondent Synergy in an effort to render Respondent Synergy insolvent and make it incapable of fulfilling its obligations of the Board's Order as enforced.

10. By the conduct described above, Respondent Gaskins, individually, acted to divert the assets of Respondent Synergy, and is therefore an individual Respondent and is thereby personally liable, jointly and severally, with Respondent Synergy for remedying the unfair labor practices of Respondent Synergy, including the payment of backpay and interest and other relief required by the Board's Order as enforced.

Failure to file an Answer

Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.⁴ By letter dated December 6, 2016, counsel for the General Counsel advised the Respondents that no answer to the compliance specification had been received by the December 5, 2016 deadline, and that unless an answer was filed by December 12, 2016, a motion for default

judgment would be filed. Nevertheless, the Respondents again failed to file an answer.

Motion, Order, and Notice

On December 14, 2016, the General Counsel filed with the Board a motion to transfer this proceeding to the Board and for default judgment. On December 15, 2016, the Board issued an order transferring the proceedings to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that Respondent Gaskins is personally liable, jointly and severally, with Respondent Synergy for the backpay due to the discriminatees as described in the Board's Order, as enforced, and in the compliance specification. The obligation of the Respondents to make the discriminatees whole under the Board's Order and court judgment will be discharged by payment of a total of \$46,359.00, plus interest as provided in the Board's Order.

ORDER

The National Labor Relations Board orders that the Respondents, Synergy One Locating Services, LLC, and Safe MarkX, LLC, as joint employers, Phoenix, Arizona, and Dervon Gaskin, an individual, Matthews, North Carolina, their officers, agents, successors, and assigns, shall jointly and severally make whole employees Mason Crisenbacker, Sean Cherry, Jacob Cherry, Troy Hager, Henry Maurice Pettit, Adam Valdez, Kevin Schroeder, Devin Koivisto, Timothy Montanez, Joshua Merino, Bryan McBride, Joe Moure, Edwin Cyrus Hare IV, Dan Huebner, David Venegas, Cory Jackson, James Redondo,

⁴ On November 28, 2016, the compliance specification served on Respondent Gaskins by certified mail was returned to the Regional office marked "refused." The compliance specification served on Respondent Synergy One Locating Services, LLC was also returned to the Regional Office as undeliverable. On December 1, 2016, the Region re-served the compliance specification on Respondent Gaskins, who is also a registered agent of Synergy One Locating Services, LLC, by certified and regular mail. According to the United States Postal Service tracking system, service of the certified mail was again refused. It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Atlantic Northeast Transport, Inc.*, 364 NLRB No. 155, slip op. at 1 fn. 1 (2016); *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *I.C.E. Electric, Inc.*, supra at 247 fn. 2; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enf'd. 843 F.2d 1392 (6th Cir. 1988).

Michael Cummings, Jason Lantrip, Manny Madrid, Pete Martinez, Stan Barker, Greg Digiordi, Garret Forrest, Sal Medina, and Jeff Rose by paying them the amounts set forth in the Board's Order, totaling \$46,359.00, plus interest as provided in the Board's Order.

Dated, Washington, D.C. April 11, 2017

Mark Gaston Pearce, Member

Lauren McFerran, Member

Philip A. Miscimarra, Acting Chairman